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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/666,009	09/19/2000	Daniel R. Ansley	BTI 0200	5080

7590 11/20/2002

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EXAMINER

SAUNDERS, DAVID A

ART UNIT	PAPER NUMBER
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1644

DATE MAILED: 11/20/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

666,009

Applicant(s)

ANILEY

Examiner

SAUNDERS

Group Art Unit

1644

--The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address--

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 2/19/02
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-4, 6-8 is/are pending in the application.
- ☐ Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-4, 6-8 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☒ The drawing(s) filed on 9/19/02 is/are objected to by the Examiner. APPROVED BY THE DRAFTSMAN
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

Art Unit: 1644

Claims 1-4 and 6-8 are pending.

It is noted that the response of 2/19/02 traversed the requirement for an election of species, and elected as species components of 60,000 daltons or less, with a two dose treatment of chickens for a *Pasteurella multocida* challenge. A notice of a non-sponsive amendment was mailed on 3/11/02 (Paper 4).

Upon reconsideration the examiner has, withdrawn the election of species requirement. It is noted that applicant's own patent 5,219,578 contains claims to the treatment of a variety of animal species for a variety of named disease states.

Claims 1-4 and 6-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-4 and 6-8 provides for the use of a composition of blood components, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claims 1-4 and 6-8 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

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Claims 1-4 and 6-8 are considered allowable over the following art, cited as of interest.

Thorbecke et al. (4,702,808) teach use of whole human serum containing the immunostimulating polypeptide platelet factor 4 to treat immunosuppressed mammals.

Thorbecke et al. limit their teachings to the treatment of mammals.

Nagai et al. teach a 9 - mer peptide present in normal serum. This peptide, designated as FTS, can serve as an immunostimulant for the treatment of immunodeficiencies. Their examples treat guinea pigs and monkeys. The disease states listed are human diseases, for which animal models thereof are mammalian animal models. There is no teaching of treating non-mammalian vertebrates.

Furthermore one could not know whether the peptides taught by Thorbecke et al. and Nagai et al. would be recognized by receptors on any of the immune cells of non-mammalian vertebrates. Therefore applicant's invention is considered unobvious.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David A. Saunders, Ph.D., whose telephone number is (703) 308-3976. The examiner can normally be reached on Monday-Thursday from 8:00 a.m. to 5:30 p.m. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan, can be reached on (703) 308-3973. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4242.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

D. Saunders:jmr

November 7, 2002

David O. Saunders
DAVID SAUNDERS
PRIMARY EXAMINER
ART UNIT 182-1644